

**SUPERIOR COURT
OF THE
STATE OF DELAWARE**

JAMES T. VAUGHN, JR.
PRESIDENT JUDGE

KENT COUNTY COURT HOUSE
38 THE GREEN
DOVER, DELAWARE 19901

February 25, 2010

Ms. Evelyn Logan
79 River Chase Drive
Dover, Delaware 19901

***Re: Evelyn Logan v. Unemployment Insurance Appeal Board
C.A. No. 09A-06-003-JTV***

Dear Ms. Logan,

You have appealed a decision of the Unemployment Insurance Appeal Board. After review of the record and your submission to the Court, it is clear that the Board's decision must be affirmed because you failed to timely appeal the claim deputy's decision.

This matter arises from a claim deputy's determination that you had been overpaid benefits, that you owe money to the Unemployment Insurance Fund, and that you would be disqualified from receiving benefits for a period of time. That decision was made on November 19, 2008. On the same day of the decision, a copy of that decision was mailed to you at 79 River Chase Drive, Dover, Delaware 19901. The post office did not notify the Department of Labor of any delivery problems. At the bottom of the mailed copy of the decision, in a section labeled "Claimant and Employer Appeal Rights," you were informed of your right to file an appeal and that the decision would become final on November 29, 2008. As described in that same section, because November 29, 2008 was a Saturday, you had until the following Monday, December 1, 2008, to file an appeal of the claim deputy's decision.

After more than three months had passed, you filed an appeal of the claim deputy's decision on March 10, 2009. Upon receipt of your appeal, the claim deputy

Logan v. UIAB

C.A. No. 09A-06-003 JTV

February 25, 2010

determined that your appeal was late and that her decision was final. A hearing was held before an appeals referee on April 3, 2009, solely regarding the issue of the timeliness of your appeal. At that hearing, you testified that the address that the decision was sent to was in fact your address, that you received the claim deputy's decision, and that you did not read the section of the decision that informed you of the requirement to appeal within ten days of the claim deputy's decision. The appeals referee affirmed the claim deputy's decision, finding that there was no evidence that your late filing was the result of any errors made by the Department of Labor. That decision was mailed to you on April 7, 2009, and you had until April 17, 2009 to file an appeal of the appeals referee's decision.

It appears that you filed a timely appeal of the appeals referee's decision on April 13, 2009. The Board considered your appeal and affirmed the appeal referee's decision, holding that "in the absence of departmental error or other severe circumstances, there is no justification to expand the jurisdictional limits for appeal." That decision was mailed to you on May 20, 2009. That document informed you of your right to file an appeal and that the Board's decision would become final on May 30, 2009. As described in the copy of the decision that was mailed to you, because May 30, 2009 was a Saturday, you had until the following Monday, June 1, 2009, to file an appeal of the Board's decision.

It appears that you filed an untimely appeal of the Board's decision on June 15, 2009. In your submission to this Court, you stated that you appealed the Board's decision because you "need to know how they came to this decision."

Your appeal raises the question of whether the Board correctly determined that the claim deputy's decision was final. The Board's determination was based on a procedural issue; in particular, whether you had shown good cause to excuse the fact that your appeal was over three months late. Such a decision will be affirmed if the Board did not abuse its discretion.¹ An abuse of discretion only occurs when the

¹ *Hartman v. Unemployment Insurance Appeal Board*, 2004 WL 772067, at *2 (Del. Super.).

Logan v. UIAB

C.A. No. 09A-06-003 JTV

February 25, 2010

Board's decision was based on clearly unreasonable and capricious grounds or when "the Board exceeds the bounds of reason in view of the circumstances and had ignored recognized rules of law or practice so as to produce injustice."²

The Superior Court has repeatedly affirmed the Board's decisions in cases very similar to yours. This Court has ruled that if a person fails to file an appeal within ten days of a claim deputy's decision, then the decision becomes final.³ "The time for filing an appeal is an express statutory condition of jurisdiction that is both mandatory and dispositive."⁴ "[T]here is a need for certainty and finality in litigation, and appeal deadlines serve an important function in our legal system."⁵

"Where the lateness of an appeal is due to the claimant's inadvertence . . . and not due to administrative error, the [claim] [d]eputy's determination will become final" and further appeal will be jurisdictionally barred.⁶ The only exception to this rule is "where there has been some administrative error on the part of the Department of Labor which deprived the claimant of the opportunity to file a timely appeal, or in those cases where the interests of justice would not be served by inaction."⁷

The Board's decision must be affirmed. In the hearing before the appeals referee, you did not claim any error by the Department of Labor. Rather, you stated

² *Id.*

³ *Lively v. Dover Wiper Co.*, 2003 WL 21213415, at *1 (Del. Super.); *Sheppard v. GPM Investments, LLC.*, 2008 WL 193317, at *3 (Del. Super.).

⁴ *Lively*, 2003 WL 21213415, at *1.

⁵ *Sheppard*, 2008 WL 193317, at *3 (citing *Holbrook v. Dep't. of Labor*, 1995 WL 411389 (Del. Super.)).

⁶ *Id.* at *2 (citations omitted).

⁷ *Funk v. UIAB*, 591 A.2d 222, 224 (Del. 1991).

Logan v. UIAB

C.A. No. 09A-06-003 JTV

February 25, 2010

that the address used by the Department of Labor was correct, that you had received the claim deputy's decision in the mail, and that you had not read the section informing you of the requirement to appeal within ten days of the claim deputy's decision. Further, you have not shown that it would be in the interest of justice to hear your appeal. Instead, your testimony and written submission hint at a factual basis for the claim deputy's decision; namely, that you had been requesting and receiving unemployment benefits while employed. In addition, your appeal to this Court was untimely.

In conclusion, the Board did not abuse its discretion. Accordingly, its decision must be affirmed.

IT IS SO ORDERED.

/s/ James T. Vaughn, Jr.

President Judge

oc: Prothonotary

cc: UIAB

File